

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

WILLIAM TIMOTHY PARKER

PLAINTIFF

VS.

CIVIL ACTION NO. 2:19-cv-120-KS-JCG

**MISSISSIPPI DEPARTMENT of WILDLIFE,
FISHERIES & PARKS, A STATE AGENCY,
AND OFFICER RICHARD HOLIFIELD,
IN HIS INDIVIDUAL CAPACITY**

DEFENDANTS

**RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT FILED BY THE
MISSISSIPPI DEPARTMENT OF WILDLIFE FISHERIES AND PARKS ON THE
CLAIM UNDER THE MISSISSIPPI TORT CLAIMS ACT**

The Plaintiff, William Timothy Parker ("Parker"), files this Response to the Motion for Summary Judgment filed by the Mississippi Department of Wildlife, Fisheries and Parks ("MDWFP") on the claim advanced under the Mississippi Tort Claims Act ("MTCA") to-wit:

1. MDWFP has filed a Motion to for Summary Judgment as to the claim asserted against MDWFP under the MTCA on the basis of immunity under Miss. Code. Ann. §11-46-9(c) and the conclusory allegation that Parker cannot demonstrate a genuine issue of material fact required by Miss. Code Ann. §11-46-9(1)(c) that MDWFP, through its employee and Conservation Officer, Richard Holifield ("Holifield"), engaged in reckless and willful disregard for the health and safety of the Plaintiff. Parker, a critically

important and indispensable volunteer fireman, was summoned on August 4, 2018 to remove the metal roof from the home of Rick and Paige Dunkerton so that the volunteer firemen on site could extinguish the raging fire.

Parker was faced with an emergent and dangerously out of control home fire and the reckless indifference manifested by Holifield was not only directed at Parker but the ramifications of such conduct spilled over to the Dunkerton family as their home continued to burn while Parker was rendered disabled by application of the CEW by Holifield. The CEW (Conductive Electrical Weapon) is designed to emit an electrical charge which disrupts the body's ability to communicate messages from the brain to the muscles causing temporary motor skill dysfunction. In Parker's case, the physical damage was not a temporary state of dysfunction. Parker suffered fractured ribs and later underwent a C6-7 anterior cervical discectomy and spinal cord decompression and C6-7 anterior cervical fusion.

2. Parker separately submits an Itemization of Facts in Opposition to the Motion for Summary Judgment.

3. The Motion and the supporting Memorandum of MDWFP are woefully inadequate in detailing a meaningful factual scenario critical to the determination of reckless disregard. The factual scenario advanced by MDWFP is incomplete at best and represents a modicum of the August 4, 2018 totality of factual circumstances. An analysis of the totality of circumstances is required to determine if a genuine issue of material fact exists on whether Holifield is entitled to immunity and whether he engaged in reckless disregard for the health and safety of Parker.

4. On August 4, 2018 Holifield arrested Parker, then released him to perform the vital function he was there for in the first instance, and then rearrested him. Holifield charged Parker with simple assault, disorderly conduct and failing to obey the directive of Holifield. Parker was acquitted on October 11, 2018 in Justice Court in Jones County on each of the three charges.

5. Parker contends that the outrageous and totally unjustified conduct and behavior of Holifield was reckless and wanton. Holifield was violently mad because Parker did not see him in time to stop his rig and continued to proceed forward, as was his duty, to the Dunkerton residence to aid in saving the Dunkerton's home and hopefully save certain sentimental items of their deceased child believed to be in the home. Holifield had no right to stop or even slow down an emergency vehicle responding to a serious residential fire. By stopping or slowing Parker, it would have caused the tanker trucks following Parker to slow or stop,

6. Holifield inflicted serious injury on Parker and while Parker was face down on the ground and other volunteer fireman observed in disbelief, the Dunkerton home continued to be consumed by a raging fire.

EXHIBITS

7. Parker offers the following exhibits in Opposition to the Motion for Summary Judgment:

Exhibit 1 - Deposition excerpts of Tim Parker (Pages 12, 16, 18, 20, 21, 26, 27, 28, 29, 30, 31, 32, 34, 35, 38, 39, 40, 52, 53, 56, 57, 58, 59, 60, 61, 62, 63, 64, 75 and 76)

- Exhibit 2 -** Justice Court criminal trial transcript excerpts (Pages 6, 7, 8, 9, 10, 13, 16, 19, 26, 31, 32, 33, 36, 37, 39, 41, 45, 48, 101, 102, 106, 107, 108 and 112)
- Exhibit 3 -** Deposition excerpts of Richard Holifield (Pages 26, 27, 31 and 33)
- Exhibit 4 -** MDWFP General Order 12.03, Par. A. Use of the Taser Device -Bates # MDWFP 513.
- Exhibit 5 -** MDWFP General Order 12.03, Par.2. c. Other Available Options-Bates # MDWFP 514.
- Exhibit 6 -** MDWFP General Order 12.03 - Bates # MDWFP 690
- Exhibit 7 -** MDWFP Use of Force Report-Bates # MDWFP 25, 26.
- Exhibit 8 -** Jones County Justice Court Abstract of Not Guilty adjudications on the three criminal charges lodged by Holifield/MDWFP against Parker.
- Exhibit 9 -** The Initial, Amended and Supplemental Expert Designations of Parker.

WHEREFORE PREMISES CONSIDERED, Parker submits that the Motion for Summary Judgment must be denied.

Respectfully submitted this the 5th day of January, 2021.

WILLIAM TIMOTHY PARKER

BY: /s/ JOE SAM OWEN (Bar No. 3965)

CERTIFICATE OF SERVICE

I, JOE SAM OWEN, of the law firm Owen and Owen, P.L.L.C., do hereby certify that I have this date electronically filed the foregoing *Response to the Motion for Summary Judgment filed by the Mississippi Department of Wildlife, Fisheries and Parks* with the Clerk of the Court using the ECF system, which served a copy to all counsel record.

SO CERTIFIED this the 5th day of January, 2021.

/s/JOE SAM OWEN (Bar No. 3965)

JOE SAM OWEN (Bar No. 3965)
OWEN and OWEN, P.L.L.C.
1414 25TH AVENUE
OWEN BUILDING
POST OFFICE DRAWER 420
GULFPORT, MS 39502-0420
TEL: (228) 868-2821
FAX: (228) 868-2813
Email: jso@owen-owen.com